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Special Civil Application No.3562 of 1982

Date of Decision: 26-7-95

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mrs.K.A.Mehta, learned counsel for the petitioners.

Mr.A.G.Uraizee, learned A.G.P. for the respondents.

Coram: (M.R. Calla, J.)

Dt:26-7-95

ORAL JUDGMENT:

1. Petitioners were initially appointed as Clerks in the office of the Labour Commissioner, Government of Gujarat. It was in the year 1972 that the petitioners were directly recruited and appointed as Senior Clerks on 1-4-72 and 1-6-72 respectively. It is submitted that the appointments on the post of Senior Clerk are required

to be made by direct recruitment as well as promotion in the quota and ratio of 1:1. It has been orally submitted by the learned counsel for the petitioners that a seniority list of Senior Clerks was issued in the year 1973, but in this list, names were not arranged in accordance with the quota and rota. One Shri A.D. Chauhan and Shri M.B. Makwana, claiming seniority on the basis of the roster on the post of Senior Clerk, preferred a writ petition in this court being Special Civil Application No. 1304 of 1973. In this matter two Letters Patent Appeals Nos. 76 of 1975 and 86 of 1974 were decided on 11-4-75 and while deciding the Letters Patent Appeals, the Division Bench decided that the quota rule could not be given a go by and the orders issued on the basis of this seniority list were quashed and set aside. After the decision of the Division Bench rendered in Letters Patent Appeals, as aforesaid, on 11-4-75, another seniority list of Senior Clerks was published on 4-3-76 maintaining the quota and the ratio and the petitioners herein were shown at Sr. Nos. 22 and 24 in this seniority list of 4-3-76 and so far as the seniority list of Senior Clerks as published on 4-3-76 is concerned, due position was given to the petitioners. In the meantime, certain promotions were made on the basis of the 1973 seniority list and therefore, the petitioners claiming to be persons similarly situated to that of A.D. Chauhan and M.B. Makwana, in whose matters the Division Bench had delivered the judgment on 11-4-75, had submitted representations that they should be given further promotions in accordance with their due seniority, which was assigned to them in the seniority list of 4-3-76 and while referring to the representation dated 3-7-81 made by the petitioner No. 1 herein, copy of which has been enclosed as Annexure "B" with the Special Civil Application, it was submitted by the learned counsel for the petitioners that the matter was represented before the authorities to consider their cases for promotion in accordance with the seniority assigned in the seniority list dated 4-3-76, but after long correspondences, a reply dated 26-2-79 was sent that the seniority of Head Clerks had not been decided and, therefore, they may approach as and when the seniority of the Head Clerks is decided. The petitioners have submitted that till the time the reply dated 26-2-79 was received, in fact there was no question of any seniority in their favour as Head Clerks because they were appointed as Head Clerks on 8-2-80 and 6-2-80 respectively and it is also submitted that later on they were also promoted as Superintendent on 22-12-80. Petitioner No. 1 submitted representations on 3-7-81 and 18-8-82 and the petitioner No. 2 submitted representations on 17-7-81 and 16-8-82 and these representations have

been placed on record as Annexures "B", "C", "D" and "E" respectively. It has also been submitted that the petitioners names were also shown in yet another seniority list of senior clerks, which was issued on 21-7-82 as on 1-1-82 and in this list, the name of petitioner No.1 was at Sr.No.18 and that of petitioner No.2 was at Sr.No.20 A seniority list of Superintendents/Head Clerks, copy of which has been placed on record as Annexure "A", was issued on 5-6-81 as on 1-6-81 and in this seniority list, the names of the petitioners were shown at Sr.Nos.40 and 41 respectively as Superintendents and at Sr.nos.21 and 22 as Head Clerks, but it was only a provisional seniority list and, therefore, final seniority list was issued on 26-11-83 and 29-11-83. In the seniority list dated 26-11-83, the seniority of the petitioners as Head Clerks was shown at Sr.Nos.60 and 63 respectively and in the seniority list dated 29-11-83 in respect of Superintendents, their names were shown at Sr.Nos.14 and 15 respectively and at the time of filing of the present Special Civil Application, both the petitioners were working as Superintendents.

2. The grievance, which has been raised on behalf of the petitioners, is that one Shri R.P.Sharma, whose name was at Sr.No.19 as Senior Clerk i.e. below the petitioner No.1 and one Shri N.C.Tailor, whose name was at Sr.No.21 i.e. below the petitioner No.2 in the seniority list dated 4-3-76, had been promoted as Head Clerks on 26-12-72 and 6-3-73 and, therefore, the petitioners, who had been promoted as Head Clerks on 8-2-80 and 5-2-80 were required to be given the deemed date of promotion as Head Clerks on 26-12-72 and 6-3-73 respectively and the grievance has also been raised that the aforesaid employees i.e. Shri R.P.Sharma and Shri N.C.Tailor, who were both juniors to the petitioners as Senior Clerks i.e. at Sr.Nos.19 and 21 in the seniority list dated 4-3-76 as against the petitioners position at Sr.Nos.18 and 20 respectively, had been promoted as Superintendents on 2-2-80 and, therefore, the petitioners, who have been promoted as Superintendents on 22-12-80, were also required to be given promotion as Superintendents from 2-2-80 i.e. the date on which Shri R.P.Sharma and Shri N.C.Tailor were promoted as Superintendents.

3. Learned counsel for the petitioners, on the premises of the aforesaid facts, has submitted that her clients have been subjected to discrimination inasmuch as their juniors have been promoted in preference to them, they have been unlawfully superseded and had their candidature been given due consideration in accordance with the seniority position assigned to them in the

seniority list of senior clerks as issued on 4-3-76, they would have been promoted as Head Clerks on 26-12-72 and 6-3-73 instead of 8-2-80 and 5-2-80 respectively and in that case, they would have been further promoted as Superintendents on 2-2-80 instead of 22-12-80 and thus, they have been denied the promotions as Head Clerks and as Superintendents from the due dates and the consequence is that they have to suffer the loss of seniority.

4. The factual position as given by the petitioners in the Special Civil Application and the seniority position and the dates of their appointments as Head Clerks and Superintendents vis a vis their juniors, as referred to herein-above, has neither been disputed by way of filing any return or otherwise nor there is any reason to disbelieve the data, as is made out from the available pleadings, which are uncontroverted, and the documents. The eligibility of the petitioners for promotions to the posts of Head Clerk and Superintendent has also not been disputed and it appears that the petitioners candidature was not considered in accordance with their seniority position assigned to them as senior clerks in the seniority list as was issued on 4-3-76 and the promotions, which were accorded to their juniors prior to the issue of this seniority list dated 4-3-76, are on the basis of the seniority list, which had been issued in the year 1973, which was a subject matter of challenge before this Court and which had been found to be unlawful in the Division Bench decision dated 11-4-75, referred to herein-above. Promotions were accorded to the juniors of the petitioners as Head Clerks on 26-12-72 and 6-3-73 and the same has percolated into denial of promotions to the petitioners on the post of Superintendents on due date and it appears that the petitioners' candidature was not considered on the correct seniority assigned to them as senior clerks while giving appointments to their juniors on the post of Head Clerk on 26-12-72 and 6-3-73 and while giving appointments on the post of Superintendent on 2-2-80 and hence the candidature of both the petitioners has suffered a serious prejudice at the time when the cases for promotions to the posts of Head Clerk and Superintendent were considered in 1972 and 1973 and in the year 1980 and thus violation of Articles 14 and 16 of the Constitution of India is writ large. The denial of appointments on the post of Head Clerk to the petitioners in 1972 and 1973 and from 2-2-80 on the post of Superintendent may have important adverse impact on their seniority as Head Clerk and Superintendent in the seniority list, which was finally issued on 26-11-83 and 29-11-83. Thus, it is a clear case of breach of the

quota and rota Rules so far as the seniority on the post of Senior Clerk is concerned and the same has consequential adverse impact on their appointments and seniority on the posts of Head Clerk and Superintendent.

5. In the result, this petition succeeds and the respondents are directed to consider the cases of the petitioners for promotion to the post of Head Clerk from 26-12-72 and 6-3-73 respectively on the basis of the higher seniority assigned to them in the seniority list of senior clerks as issued on 4-3-76 in which Shri R.P.Sharma and Shri N.C.Tailor were shown to be juniors vis a vis the two petitioners and to consider their cases for promotion on the post of Superintendent from 2-2-80, on which date the aforesaid juniors were appointed by promotion as Superintendents. In case, as a result of such consideration, the petitioners are found to be suitable for promotion on the aforesaid two dates on the post of Head Clerk i.e. 26-12-72 and 6-3-73, appropriate orders be issued appointing them as Head Clerks by promotion from 26-12-72 and 6-3-73 instead of 8-2-80 and 5-2-80 respectively and the orders with regard to their promotion as Superintendents from 22-12-80 may also be revised to be made effective from 2-2-80 in case they are found suitable for the post of Superintendents from 2-2-80 on the basis that they had been promoted as Head Clerks on 26-12-72 and 6-3-73 respectively and in such a case, their seniority position in the final seniority lists of the Head Clerk and Superintendent issued on 26-11-83 and 29-11-83 may also be revised accordingly and they may be given their due position therein with all consequential benefits including further promotions beyond the post of Superintendent as if they had been promoted as Head Clerks on 26-12-72 and 6-3-73 and as Superintendents on 2-2-80. This Special Civil Application is accordingly allowed and the Rule is made absolute in terms as aforesaid. No order as to costs.

The directions, as aforesaid, shall be carried out at the earliest possible opportunity, but in no case, later than a period of three months from the date the copy of the writ is served upon the respondents.